

Serial No: 10/731,66
Our Docket: 03402-PA-DIV (0074.0021)

Priority

Regarding the allegation by the Examiner that the claims of this application are not supported by previously mentioned applications. It is pointed out that not all subject matter of this application has to be supported by prior applications. However, please note that the prior applications do support common subject matter. It is further noted that under the "Priority" paragraph no specific rejection or objection has been made.

Response to Restriction Requirement

It is noted that claims 1-35, 39-53 and 58-70 have been canceled, leaving elected claims 36-38 and 54-57 in this application.

Claim Objection

Claim 54 has been corrected as to spelling.

The preamble of claims 55-57 have been made to properly depend from claim 54.

Double Patenting

The rejection of claims 36-38 on the grounds of double-patenting has been obviated by a terminal disclaimer.

Rejection 35 U.S.C. § 112

Claims 38 and 54 stand rejected under 35 U.S.C. § 112, second paragraph.

Regarding claim 38: This claim is said to lack antecedence for the term "the cells",
Applicants answer: The claim has now been amended to provide antecedence.

In claim 54 the term "substantially shorter than the first period" is said to be indefinite because no standard is set forth for measuring such an expression. Applicants respond:

Applicants have now amended claim 54 to remove the expression "substantially". The method for preparing the solid form of material and the injectable product are described in the specification; on pages 11 and 12 for "solid tissue implant" and on page 13 for "injectable tissue implant". Note also that the culture period for the injectable tissue implant is shorter than that for the solid tissue implant. Injectable tissue implant, 14-21 days, specification page 13, line 6; and solid tissue implant, specification page 12, lines 7 and 14, is for 30 days. Attention is also directed to the fact that the claim calls for the second shorter culture period be of such a nature that the final product is in a "substantially fluid state" which would be a limitation on the culture period.

Claim 54 is said to be indefinite in the expression "substantially solid form"; as not being defined by the disclosure and claim 54 is said to be indefinite in the expression "substantially fluid state". Applicants respond: Note that MPEP 2173.05(b)D allows for the use of the expression "Substantially" in the claim, since those skilled in the art would know what is meant when the term "substantially" is used. Attention is also directed to the fact that the "expression "solid form" and "fluid state" have been referred to throughout the disclosure and specific examples of their preparation are defined on pages 11-13 of specification. Accordingly, it is believed that the terms in question are adequately defined and therefore not indefinite.

Since all outstanding issues of record having been properly addressed, the Examiner is requested to indicate allowable subject matter in this application.

Serial No: 10/731,66
Our Docket: 03402-PA-DIV (0074.0021)

Sincerely,

January 24, 2007
Date

Sam Rosen

Sam Rosen
Reg. No. 37,991
Attorney for Applicant

CERTIFICATE OF TRANSMITTAL
I hereby certify that this correspondence is
being deposited with the U.S. Postal Service
as Express Mail in an envelope addressed to:
Commissioner for Patents, P. O. Box 1450,
Alexandria, VA 22313-1450
Date: January 24, 2007
Express Mail Label No.: EV 958380655 us
By: Judy Robertson
Judy Robertson

SR/jjr (01/24/07)

ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP
502 Washington Avenue, Suite 220
Towson, MD 21204
Phone: (410) 337-2295
Fax: (410) 337-2296

P:\HOME\Clients\0074\0021\03409 PTO amdmt response.wpd